



## DEPARTMENT OF THE ARMY

BUFFALO DISTRICT, CORPS OF ENGINEERS

1776 NIAGARA STREET

BUFFALO, NEW YORK 14207-3199

REPLY TO  
ATTENTION OF:

January 19, 2005

Regulatory Branch

SUBJECT: Jurisdictional Determination for Department of the Army  
Application No. 2003-01972(1)

Mr. Richard Bargabos  
Greenfield Homes, LLC  
7519 Morgan Road  
Liverpool, New York 13088

Dear Mr. Bargabos:

This is in regard to the re-evaluation of the October 2, 2003 jurisdictional determination, for the Greenfield Homes, LLC 147 acre parcel located north of Route 370, in the Town of Lysander, Onondaga County, New York.

On January 9, 2001, the U.S. Supreme Court issued a ruling that affected the Corps of Engineers authority to regulate isolated, non-navigable, intrastate waters under the Clean Water Act (Solid Waste Agency of Northern Cook County v. the U.S. Army Corps of Engineers, No. 99-1178). Specifically, the case involved statutory and constitutional challenges to the assertion of Clean Water Act jurisdiction over isolated, non-navigable, intrastate waters where use of the site by migratory birds established the necessary interstate commerce connection. The U.S. Supreme Court found that use of the site by migratory birds alone is **not** sufficient to establish Federal jurisdiction over isolated wetlands, and that such areas are not waters of the United States and are **not** subject to regulation under Section 404 of the Clean Water Act.

I have re-evaluated our original jurisdictional determination for this property, which identified Wetland 2 (1.63 acres) and Wetland 3 (18.04 acres) as isolated. Based upon new information and a site visit on December 13, 2004, I have determined that Wetlands 2 and 3 are not isolated, but are connected to a tributary system of the Seneca River, a navigable water of the United States and thus subject to regulation under Section 404 of the Clean Water Act. Therefore, a permit is required if you propose to discharge fill material into the regulated wetlands, labelled 1, 2, and 3 on the site.

Please note that the Federal wetland boundaries for Wetlands

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labelled 1, 2, and 3 on your property, totalling 23.56 acres, as delineated by Terrestrial Environmental Specialists, Inc. and as shown on the attached drawings, were confirmed and will remain valid for a period of five (5) years from the date of this correspondence. Further, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

For your convenience and future use, I am enclosing a permit application. I also encourage you to contact the Auburn Field Office to set up a pre-application meeting at your convenience.

A copy of this letter has been forwarded to Mr. Mario Paula of the U.S. Environmental Protection Agency and Mr. Lemmuel Srolovic of the New York State Office of the Attorney General.

Questions pertaining to this matter should be directed to Bridget Brown at (315) 255-0143, by writing to the following address: U.S. Army Corps of Engineers, Auburn Field Office, 7413 County House Road, Auburn, New York 13021, or by e-mail at: [bridget.brown@usace.army.mil](mailto:bridget.brown@usace.army.mil)

Sincerely,

**SIGNED**

Diane C. Kozlowski  
Chief, New York Application  
Evaluation Section

Enclosures

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Greenfield Homes LLC	File Number: 2003-01972(1)	Date: January 191, 2005
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Bridget Brown  
U.S. Army Corps of Engineers  
Auburn Field Office  
7413 County House Road  
Auburn, New York 13021  
(315) 255-0143  
bridget.brown@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Mr. Michael Montone  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street  
Cincinnati, OH 45201-1159  
(513) 684-6212; FAX(513) 684-2460  
michael.g.montone@lrdor.usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Date:

Telephone number:

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Signature of appellant or agent.